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S E C R E T SECTION 01 OF 03 BRUSSELS 003363

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TAGS: [PREL](#) [KNNP](#) [IR](#) [PARM](#) [EFIN](#) [ETTC](#) [KTFN](#) [EUN](#)
SUBJECT: EU TOOLS FOR POSSIBLE USE AGAINST IRANIAN
FINANCIAL INSTITUTIONS

REF: A. SECSTATE 149523
[B](#). SECSTATE 149648
[C](#). BRUSSELS 3251

Classified By: USEU POLMINCOUNS LAURENCE WOHLERS FOR REASONS 1.4(B) AND
(D)

Summary

[1](#)1. (S/NF) In response to Refs A and B, Mission submits the following information regarding possible tools for use against Iranian financial institutions and follow-up to the October 11 FATF Statement on Iran. The EU remains divided over next steps on sanctions and has continued discussions in various fora, including the November 19 Foreign Ministers meeting (GAERC) in Brussels. One emerging aspect of the debate is whether the EU should undertake new "formal" measures at the Community level or "informal" actions at the Member State level. The European Commission has a technical option to initiate measures against Iran, but in reality this will not happen without a prior political consensus of the EU Member States. End summary.

FATF and Financial Advisory

[1](#)2. (S/NF) Question: Does the EU have the ability to issue a financial advisory, perhaps by drawing on the October 11, 2007 FATF statement on Iran, on the general risks of doing business with Iran? If so which EU body or bodies could do so?

[1](#)3. (C/NF) Answer: While the EU has various potential tools at its disposal, it is unlikely to use them in the short term. The European Commission has a technical option to initiate measures against Iran, but in reality this will not happen without a prior political consensus of the EU Member States. Iran-related policy is widely considered among EU bodies (the Commission, the Council Secretariat, and the Member States) as a foreign policy domain, i.e., "Pillar II" (Common Foreign and Security Policy). Thus, Commission services involved in Iran issues defer to EU member nations for initiating the policy discussion. The Member States in turn defer to the EU-3.

[1](#)4. (C/NF) The Commission has a legislative instrument, a "recommendation," which is non-binding advice to Member States. To write a recommendation based on the FATF October

statement, the pen would most likely be held by the Directorate-General for Internal Market and Services (MARKT), whose staff serve as the Commission's FATF representatives. (Note: The other possible contender to play a leading Commission role on Iran is MARKT's sister service, DG External Relations (RELEX). RELEX has confirmed it defers to MARKT on FATF and Financial Services issues, including on this specific issue; RELEX also defers to the EU member nations on Iran in general. End note.)

15. (C/NF) The European Commission is a FATF member, but it is not a direct competent authority for financial jurisdictions. MARKT does not intend to prepare a recommendation to Member States on the basis of either the October 11 FATF statement or the October 12 FATF Guidance on Implementation of UNSCR 1737. First, although the FATF documents are non-binding, a Commission recommendation would be perceived as quasi-binding on EU Member States -- in contradiction to the expressed positions of some EU FATF members. Indeed, a UK Permrep contact indicated that Member States might oppose any Commission effort to take this step now. MARKT representatives explained to USEU that EU FATF members had also criticized the October 12 recommendations for lack of prior industry consultation, feasibility considerations, and typologies.

16. (C/NF) Nevertheless, MARKT is confident EU Member States will implement the FATF statement on UN and FATF grounds. They view the statement's "high bar" as helpful, with a "constructive ambiguity" to allow ad hoc member groupings to consult each other on appropriate national measures. MARKT intends to ask the FATF Secretariat if it will solicit reports from members on implementation. Otherwise, MARKT will consider initiating such an exercise itself for EU

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members. (Note: Of 27 EU Member States, 15 are FATF members and have direct responsibility to review the non-binding FATF statements and choose how to implement. The other 12 are members of the FATF-Style Regional Body MONEYVAL, which in turn is an Associate Member of the FATF. It is Commission policy to better integrate the EU's actions in these two bodies, and MARKT expects all 27 nations to consider what measures they can take in support of the FATF statements, regardless of direct membership. End note.) MARKT anticipates that the FATF's June 2008 review will lead to a more consolidated and practicable FATF policy.

Other Measures Against Iran?

17. (S/NF) Are there any other ways in which the EU could encourage or induce financial institutions within EU Member States to cease processing Iran-related transactions and close Iran-related accounts?

18. (C) Answer: The EU Member States are studying their collective and national options on Iran (Ref C), including "formal and informal" measures which could encourage or induce European financial institutions to isolate Iran further from the international financial system. Mission understands that the Council Secretariat and the EU Member States' Heads of Mission (HOMs) in Tehran are preparing separate papers on options for new sanctions as well as an assessment of the economic impact on Iran of existing EU and UNSC sanctions. We expect that the Commission will continue to sit on its hands until a Member State consensus position on next steps emerges. Meanwhile, the Commission is monitoring EU compliance with FATF standards implemented by EU directives (which are not immediately applicable as a matter of law). For example, Member State reports to MARKT's survey of the EU's Third Anti-Money Laundering Directive implementation are due by December 15.

Commission Statement Unlikely

¶9. (C/NF) The Commission could issue a press statement similar to that issued by FATF on October 11. Moreover, the UK Permrep told us that it may seek EU-3 support for such an EU statement. However, USEU understands that Internal Markets Commissioner McCreevy is loathe to expend political capital in making public statements on or engage in terrorism finance issues.

No Iran Sanctions Monitoring To Date

¶10. (C/NF) Comment: The Commission has both the authority and the responsibility to monitor and assist Member State implementation of EU (and UNSC) sanctions. Common Positions and their companion regulations are immediately effective as law in Member States upon publication in the Official Journal of the EU. Member States are supposed to report back to Brussels on what exactly the relevant national authorities are doing to bring the Regulation and its annexes to the attention of financial institutions. They are also obliged to exercise effective oversight to ensure the law is being adhered to. Standing Council guidance entitled "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy" (15114/05, para 80) state that "Both the CFSP legal instruments and the EC regulation should provide for regular reporting on the implementation measures and enforcement actions taken by Member States to give effect to the restrictive measures . . . This is crucial where autonomous measures are at issue" To date, however, the Commission has not polled Member States on what exactly their relevant national authorities are doing to bring the Regulation and its annexes to the attention of financial institutions and to exercise effective oversight to ensure the law is being followed. The reason is simply lack of political will due to the fragility of the EU consensus on Iran sanctions. We do not expect Commission experts will collect such information unless and until the EU political leadership or the Council have asked them to do so. We highlight three possible areas in which the EU could move forward immediately:

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- the Commission could ask Member States for data on the effect of existing EU sanctions on Iran's access to financial intermediation in their national jurisdictions;
- the European Parliament could call hearings on Commission and Council monitoring of UNSCR and EU autonomous sanctions implementation;
- the Council could decide to conduct another round of designations of individuals and entities involved in or supporting missile and nuclear proliferation activities, such as those designated by the United States.

Comment

¶11. (C) As reporting from EU capitals and the above discussion indicates, the lack of political consensus among Member States will be used as an excuse by those EU actors who are reluctant to take more assertive action against Iran in the financial and economic realm. They will continue to claim that they cannot act unless the initiative comes from "somewhere else," be it Security Council, the EU Foreign Ministers, or the Commission. In the case of more obstructionist Member States, the excuse will be that they have ceded national authority on financial sanctions to the bureaucrats in Brussels. Clearly, on the question of Iran sanctions authorities in the EU, key Member States and institutions in Brussels will continue to flee

responsibility. End comment.

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